

Judge Vaidik, cont.

range of honors including the 1996 Indiana Domestic Violence Coalition Judge of the Year and the 1997 Indiana Judges Association Special Merit Award.

Judge Vaidik was appointed to the Court of Appeals in February 2000 by Governor Frank O'Bannon and was retained by election in 2002 and 2012. Because Judge Vaidik sees the Court of Appeals at the intersection of theoretical and practical law, she believes the Court should embody the highest degree of fairness and impartiality.

This view informs her passion for teaching, as she feels that Hoosiers, and all litigants, deserve the finest possible legal advocates on their behalf. Judge Vaidik also believes that legal writing must be distinguished by logical construction and clear, explanatory prose.

She is an adjunct professor at the Indiana University Maurer School of Law and won its 2011 Adjunct Professor of

the Year Award. She has served as a visiting professor at the College of Law of England and Wales and taught as an adjunct professor at Valparaiso University Law School. She has taught at many law schools and for a number of organizations including the Indiana State Bar Association, the Indiana Legal Education Forum, and the Indiana Judicial Center.

Judge Vaidik has trained lawyers involved in prosecuting Rwandan war crimes, Mexican lawyers prosecuting drug lords, and solicitor advocates seeking the rights of audience in the High Courts in Belfast, Northern Ireland. She is particularly proud of her long association with the National Institute of Trial Advocacy, which honored her with its 2007 Robert Keeton Faculty Award.

Despite her Court of Appeals caseload and her teaching, Judge Vaidik is also actively involved in a wide variety of community, legal, and judicial or-

ganizations. She served on the State of Indiana Children's Peak Performance Commission and has held many posts with the Indiana Judges Association and Indiana Judicial Center. She has been chairperson of the Judicial Education and Community Relations Committees of the Indiana Judicial Center and is a member of the American Bar Association, Indiana State Bar Association, and Sagamore Inns of Court.

She has received many other awards and honors including the 2004 Indiana State Bar Association's Women in Law Achievement Award, the 2007 Indiana Lawyer Distinguished Barrister Award, the 2003 Paragon of Justice Award from Valparaiso University Law School, and the Sagamore of the Wabash Award from two Indiana governors.

Judge Vaidik and her husband are the proud parents of twin daughters, one a medical doctor and one a lawyer, and they have two grandsons, who can choose either profession.

Judge Barnes, cont.

County. For those efforts, he received the Regional Director's Citation in 1989 and 1998 for innovative and effective child support enforcement from the U.S. Department of Health and Human Services, and in 1995 received the State Director's Award for Outstanding Child Support Program from the Indiana Family & Social Services Administration.

While Prosecutor, Judge Barnes was elected President of the National District Attorneys Association (1995-1996), Chairman of the Board, Indiana Prosecuting Attorneys Council (1982-1983, 1992-1993), President of the St. Joseph County Bar Association (1992-1993), National Board of Trial Advocacy (1995-1996), National Advisory

Council on Violence Against Women (1997), Chairman of the Board of Regents, National College of District Attorneys (1997-1998), American Prosecutor's Research Institute (1997-1998), and various other professional and civic organizations.

The Indiana Victim Assistance Network honored him with its Special Advocate Award in 1989, and in 1998 he received the Eugene "Shine" Feller Award from the Indiana Prosecuting Attorneys Council.

Judge Barnes supports a wide range of community organizations, especially those that serve vulnerable populations. He is a longtime supporter of the LOGAN Center's annual Nose-On campaign and in 1986 received its Joseph J. Newman Award for Committed and Outstanding Advocacy on Behalf of

Developmentally Disabled Individuals.

He also has served on the boards of the St. Joseph County Chapter of the American Cancer Society and the Alcoholism Council of St. Joseph County.

Judge Barnes is a member of the Indiana Bar Foundation, the St. Joseph County Bar Association, the Indiana State Bar Association, and the Illinois State Bar Association.

Judge Barnes is married to Alberta Barnes, a retired educator. They are the parents of two sons, Tim and John. Tim is an attorney in Washington, D.C. John is a TV producer at NBC Sports. John and his wife, Bess, are the parents of the world's most perfect granddaughter, Addison Emily.

He lives in South Bend and is an avid baseball fan and reader.

SYNOPSIS

In *Pirtle v. State*, our Indiana Supreme Court held that the clause in the Indiana Constitution prohibiting unreasonable searches and seizures requires "a person who is asked to give consent to search while in police custody is entitled to the presence and advice of counsel prior to making the decision whether to give such consent."

That advisement is now called "a *Pirtle* warning." At issue in this case is whether evidence police collected during a search a woman consented to must be suppressed because the police did not tell her she had a right to consult with a lawyer before she consented to the search.

In December 2013 and January 2014, Amy Ann Price and her husband burglarized five residences. She dropped him off, drove around while he entered residences and took items, and then picked him up.

If a resident returned home early, Price would distract the resident until her husband could flee. They pawned some of the stolen items, kept some, and threw some away.

Price was on parole at the time, but there was a warrant for her arrest because she had not checked in with her parole officer. On Jan. 15, 2014, Price's parole officer saw her at a convenience store and had her arrested.

When police arrested Price, they impounded the car she had been driving.

The arresting officer saw syringes in her purse and took the purse to the station with Price. At the station, the police gave Price a *Miranda* warning, and she waived her right to counsel. Price gave police information about several burglaries involving her and her husband.

Price consented to a search of her purse, but the police did not give her a *Pirtle* warning. Inside the purse, police found stolen property and a pawn ticket for other stolen property.

The State charged Price with burglary and theft. Price moved to suppress her statement to the police and the evidence they found in her purse. The court denied this motion and admitted the evidence over her objection at trial.

The jury found Price guilty.

- continued on p. 2

Court of Appeals of Indiana

*Hearing oral argument at
Hoosier Boys State - Trine University
Monday, June 15, 2015 @ 1 p.m.*



Price v. State
29A04-1408-CR-405

*On Appeal from Hamilton Superior Court
The Honorable Daniel J. Pfleging, Judge*

Variations on a Theme: Why Judges Wear Black Robes

Black robes as judicial garb is a centuries-old tradition with obscure roots. There are variations.

Judges on the Maryland Court of Appeals (that state's highest court) wear red robes. Former United States Chief Justice William Rehnquist added gold stripes to his sleeves – on his own volition.

"I always heard that the reason we wear robes is because we represent uniform justice and not our individual proclivities," says Judge Margret G. Robb, of the Court of Appeals of Indiana.

That principle also applies to such ensembles as symphony musicians and soldiers.

Tradition, not rules or laws, are behind the relative uniformity of judicial garb.

All of Indiana's current Supreme Court and Court of Appeals judges wear unadorned black robes, although some of the women sometimes wear collared blouses. Senior Judge Betty Barteau says she always wore a white judicial collar when she was a full time member of the court, but as a trial court judge she occasionally wore navy or dark green robes.

For the record, robes are reserved for court and ceremonial events. Around the office, judges dress like the rest of us.

Synopsis, cont.

Price asserts that her statement and the evidence collected pursuant to the search of her purse should have been suppressed because the State didn’t give her a *Pirtle* warning. Price was told she had a right to consult with an attorney before speaking to the police, but our Indiana Supreme Court has held that “giving an arrestee *Miranda* warnings before commencing interrogation does not sufficiently inform him of his right to consult with counsel prior to consenting to a search.” The State provides three arguments why the trial court was correct to admit the evidence even though there was no *Pirtle* warning: (1) the search of the purse was “minimally intrusive” and thus did not require a *Pirtle* warning; (2) Price was on parole, so she had no constitutional right to be free of unreasonable search; and (3) the search was valid as a search inci-

dent to a lawful arrest. Price also asserts that the final jury instructions were “misleading” because they “emphasized specific evidentiary facts and warranted an inference of guilt.” Price was charged as an accomplice, which meant the State had to prove she “knowingly or intentionally aid[ed], induce[d], or cause[d] another person to commit an offense.” Price argues that Pattern Jury Instruction 2.11, which requires the description of the actions taken by the defendant in regards to accomplice liability, unfairly prejudiced the jury against her because it stated specific evidentiary facts the State was required to prove. As such, having them in the jury instruction led the jury to believe they were already proven. The State argues the jury instruction was not misleading. Even if it was, the State asserts, any error in the instruction was harmless – Price confessed to the burglaries, so the instruction could not have affected the jury’s verdict.

After oral argument

After oral argument, a designated “writing judge” drafts an opinion for the panel’s consideration. Opinions usually affirm or reverse lower court rulings in whole. But some affirm in part, reverse in part, or both. Often the opinion instructs the trial court about next appropriate steps. Many opinions are unanimous, although 2 -1 votes are not uncommon. Judges sometimes write separate concurring or dissenting opinions that emphasize different points of law or facts than the main opinion. Parties can appeal Court of Appeals decisions to the Indiana Supreme Court by filing a petition to transfer. But transfer is not automatic; the Supreme Court can grant or deny transfer with or without giving a reason. If the petition is denied, the Appeals Court decision stands. All opinions are posted to the court’s website, www.in.gov/judiciary.

Attorneys for the Parties

For the Appellant

Indianapolis native **Andrew M. Barker** graduated from Indiana University-Bloomington in 1983 with a BS in Finance, and from Indiana University Law School in December 1988. He participated in Moot Court and interned at the Marion County Prosecutor’s Office while in law school. He began his career at Campbell Kyle Proffitt, LLP, in Noblesville in January 1989 and became a partner in 1995. Mr. Barker’s practice areas include divorce, personal injury, civil litigation and criminal defense. He has been a Public Defender in Hamilton Superior Court 2 since 1991 and has tried more than 125 major felony cases before juries. He has authored or co-authored approximately 10 published decisions. Mr. Barker is a member of the Hamilton County Bar Association and is admitted to practice in U.S. District Court for the Southern District of Indiana. For many years he was the only Hamilton County attorney to be death-penalty certified. He and his wife, Jennifer, have an 11-year-old son, Charlie. Mr. Barker enjoys road biking, playing basketball and golf, and spending time and traveling with family.

For the Appellee

Monika Prekopa Talbot was admitted to the Indiana Bar in 1993 and joined the Office of the Indiana Attorney General in February 2000 as a Deputy Attorney General in Criminal Appeals. She became a supervising attorney in 2004. Over the years, she has drafted more than 800 criminal appellate briefs in all areas of criminal law, ranging from minor infractions to serious felonies such as burglaries, rapes, and murders. Prior to joining the Attorney General’s Office Ms. Talbot worked at two different Indianapolis area law firms, where, in addition to some criminal appellate work, she handled civil cases including employment litigation, personal injury, product liability, and family law. Ms. Talbot has twice argued in the 7th U.S. Circuit Court of Appeals, several time in front of the Indiana Court of Appeals, and approximately 15 times in the Indiana Supreme Court. Ms. Talbot is a native of Budapest, Hungary, and is fluent in Hungarian, English, French, and Spanish. After coming to the U.S., she earned a Master’s Degree in English Language and Literature from Rutgers University in New Jersey and a law degree from Indiana University School of Law-Indianapolis. Besides practicing law, Ms. Talbot has also taught English as a second language. In her free time, Ms. Talbot enjoys traveling, oil painting, gourmet cooking, and various fitness activities.

Today’s Panel of Judges



The Honorable
Melissa S. May

Vanderburgh
County

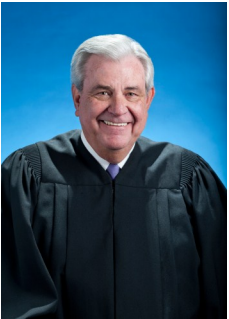
Born in Elkhart, **Melissa S. May** studied criminal justice at Indiana University-South Bend before earning her law degree from Indiana University School of Law-Indianapolis in 1984. She then launched a 14-year career in private legal practice in Evansville that focused on insurance defense and personal injury litigation. Judge May moved directly from private practice to the Court of Appeals in 1998 and was retained by election in 2000 and 2010. Prior to this year, she served as Presiding Judge of the Fourth District, which covers all of Indiana. Judge May has long been active in local, state and national bar associations and foundations, with a particular focus on continuing legal education and appellate practice. At various times, Judge May has chaired the Indiana State Bar Association’s Litigation and Appellate Practice sections and was secretary to the Board of Governors. As chair of the Indiana Pro Bono Commission, Judge May worked with 14 pro bono districts to train lawyers and mediators on how to assist homeowners facing foreclosure. She also serves on an Indiana Judicial Conference Committee that translated all civil jury instructions into “plain English.” Judge May teaches trial advocacy at Indiana University McKinney School of Law and frequently speaks on legal topics to attorneys, other Judges, schools, and other professional and community organizations. She is special counsel to the American Bar Association’s Standing Committee on Attorney Specialization, on which she’s served since 2003. In October 2011, Judge May received the Women in the Law Recognition Award from the Indiana State Bar Association for her dedication to helping women advance in the legal community. She and her husband live in Morgan County.



The Honorable
Nancy H. Vaidik

Porter County

Nancy H. Vaidik is a judge and a teacher with broad experience in both trial and appellate courts and in legal classrooms. She has an expertise in trial advocacy and appellate advocacy, with a strong background in the rules of evidence and legal mediation. Judge Vaidik was selected by her colleagues as **chief judge** of the Court of Appeals for a three-year term beginning Jan. 1, 2014. Judge Vaidik grew up in Portage, Indiana, and is a sixth-generation Hoosier who retains strong ties to her home town. She graduated with high distinction from Valparaiso University in 1977, with a double major in political science and psychology, and then studied at Valparaiso University Law School, where she earned her Juris Doctor in 1980. Her early years as deputy and then chief deputy Porter County prosecutor provided the grounding for her judicial career. As an attorney, she tried over seventy-five jury trials and founded the Porter County Victims Assistance Unit, the Porter County Sexual Assault Recovery Project, the Domestic Violence Service, and the Valparaiso University Law School Mediation Clinic. She also served on the Porter County Community Corrections Board and led a countywide task force that spearheaded the eventual construction of a new county jail. After serving as a prosecutor, she went into private practice and specialized in domestic relations, probate, municipal law, and general litigation. She represented Caring Place, Inc., a shelter for battered women in Valparaiso. From 1992 to 2000, she served as the judge of the Porter Superior Court. During her tenure on the trial court, Judge Vaidik was awarded a wide



The Honorable
Michael P. Barnes

St. Joseph County

Michael P. Barnes was appointed to the Court of Appeals of Indiana in May 2000 after long service as the St. Joseph County Prosecuting Attorney. He was retained on the Court by election in 2002 and 2012 and served as Presiding Judge of the 3rd District from 2009 through 2011. In 2012 he wrote 144 majority opinions for the Court of Appeals. Judge Barnes was born and raised in rural Illinois. He earned a B.A. in History at St. Ambrose College in Davenport, IA in 1970 and received his J.D. in 1973 from the University of Notre Dame Law School. He practiced law from 1973-78 at the South Bend law firm of Voor, Jackson, McMichael and Allen, while also serving as Deputy Prosecuting Attorney. Voters chose him in 1978 to be the St. Joseph County Prosecuting Attorney, an office he held for 20 years over five elections. While prosecutor, he oversaw a staff of 65 and spearheaded development of the CASIE Center for child victims of physical and/or sexual abuse, which continues to serve the community. Judge Barnes also created a domestic and family violence unit in the Prosecutor’s office and launched a pretrial diversion program for nonviolent misdemeanor offenders that served as a model for successful state legislation. The domestic and family violence unit focused solely on crimes against women and children, including abuse and neglect. Judge Barnes personally tried more than 25 murder and other major felony cases while overseeing a staff of 12 to 15 deputy prosecutors. His efforts to collect delinquent child support payments garnered more than \$100 million for children in St. Joseph

- continued on p. 4

- continued on p. 4